OIL, GAS & OTHER MINERALS, INC.

IBLA 93-199 Decided November 30, 1994

Appeal from a decision of the Acting State Director, Eastern States Office, Bureau of Land Management, affirming an assessment of $3,000 for drilling on a Federal oil and gas lease without a permit. LAES 37678.

Affirmed in part; reversed in part.

1. Oil and Gas Leases: Civil Assessments and Penalties--Oil and Gas Leases: Incidents of Noncompliance

   Under 43 CFR 3163.1(b)(2), BLM is to impose an immediate assessment of $500 per day, not to exceed $5,000, for drilling an oil or gas well on a Federal oil and gas lease without approval or for causing surface disturbance on Federal or Indian surface preliminary to drilling without approval. An assessment under 43 CFR 3163.1(b)(2) of $3,000 for 4 days of surface disturbance and 2 days of drilling will be reduced to $1,000, where the surface disturbance did not take place on Federal or Indian surface.

APPEARANCES: Sedgwick W. Middleton, Tyler, Texas, for appellant.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Oil, Gas and Other Minerals, Inc. (OGOM), has appealed from a January 8, 1993, decision of the Acting State Director, Eastern States Office, Bureau of Land Management (BLM), affirming an assessment of $3,000 levied by the Assistant District Manager, Division of Mineral Resources, Jackson District Office, BLM, Jackson, Mississippi, for drilling on Federal oil and gas lease LAES 37678 without prior BLM approval.

BLM issued competitive lease LAES 37678 effective December 1, 1987, for approximately 166 acres described as the SW¼ NE¼ sec. 2, and W½ E½, NE¼ NW¼ sec. 3, T. 23 N., R. 16 W., Louisiana Meridian, in the Rodessa

Field, Caddo County, Louisiana. 1/ OGOM obtained the lease through an assignment, effective July 1, 1991.

By letter dated November 20, 1992, OGOM informed BLM that it intended to move a drilling rig onto a location in sec. 2 of the lease. OGOM also stated: "We have contacted the surface owner, Mr. Warren, and made arrangements with him." According to a December 29, 1992, memorandum to the State Director from the Jackson District Office, on November 30, 1992, OGOM notified the Jackson District Office by telephone that it had spudded a well on the lease. The District Office informed the operator that spudding the well without an approved application for permit to drill (APD) violated 43 CFR 3162.3-1(c). BLM directed OGOM to shut-in the well until bond had been posted and an APD approved. OGOM shut-in the well on December 1.

On December 9, 1992, the Jackson District Office forwarded a letter to OGOM stating:

> It has come to our knowledge that OGOM, Inc. has disturbed the surface to prepare drilling pad on the Federal oil and gas lease LAES-37678 in Caddo Parish, Louisiana and also has spudded the oil well Warren #1 on this lease without permission from the Bureau of Land Management. These actions are in violation of Title 43 CFR 3162.3-1(c), Oil and Gas Orders #1 and 2 and other Federal requirements. A copy of 43 CFR 3162.3-1 is enclosed.
>
> Oil and Gas Order No. 2, Part 1D-5 states, "Failure to obtain approval prior to commencement of drilling or related operations shall subject the operator to immediate assessment under Title 43 CFR 3163.1(b)(2)." Your company began the operations on November 25, 1992 and drilling operations were shut-in by the BLM on December 1, 1992. Hence, you were in violation of BLM requirements for six days, and you are assessed $3,000 as per Title 43 CFR 3163.1(b)(2) at the rate of $500 per day.

Appellant requested administrative review of that action by the State Director pursuant to 43 CFR 3165.3(b). In the decision now under appeal, the Acting State Director, Eastern States Office, upheld the assessment, stating:

> I have reviewed the actions of the Jackson District Office and, after careful deliberation, agree with its assessment for

---

1/ The lands in sec. 2 were patented on Oct. 15, 1920, with a reservation for oil and gas. The lands in sec. 3 were patented on Feb. 7, 1934, also with a reservation for oil and gas.

drilling without approval. You failed to timely submit to the Authorized Officer for approval an APD in accordance with Title 43 CFR 3162.3-1(c) and Title 43 CFR 3162.3-1(d).

My review determined you, without an approved APD, started surface work for moving the drilling rig to the location on November 25, 1992, and subsequently spudded the well on November 30, 1992, before the Authorized Officer shut in the drilling operation on December 1, 1992. The Authorized Officer's decision to notify you of the assessment for such a serious violation under Title 43 CFR 3163.1(b)(2) was correct and proper.

In its statement of reasons on appeal (SOR), appellant concedes that operations were conducted for 6 days, from November 25 to December 1, 1992, without prior approval. Appellant argues, however, that all surface operations were conducted on its own private surface, and that, as actual drilling occurred on only 2 out of the 6 days, pursuant to 43 CFR 3163.1(b)(2), OGOM may properly be assessed not more than $1,000. Furthermore, appellant contends, the infraction was of such a minor nature that the assessment should be no more than $250, pursuant to 43 CFR 3163.1(a)(2). We accept appellant's first argument and reject the second.

[1] Departmental regulations require an operator to submit an APD at least 30 days prior to commencement of operations. 43 CFR 3162.3-1(d). No drilling operations or surface disturbance may be commenced prior to approval of the permit. 43 CFR 3162.3-1(c). BLM imposed the assessment against OGOM in accordance with 43 CFR 3163.1(b)(2) which provides:

> (b) Certain instances of noncompliance are violations of such a serious nature as to warrant the imposition of immediate assessments upon discovery. Upon discovery the following violations shall result in immediate assessments, which may be retroactive, in the following specified amounts per violation:
>
> * * * * * * *
>
> (2) For drilling without approval or for causing surface disturbance on Federal or Indian surface preliminary to drilling without approval, $500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed $5,000 * * *.

This Board has stated on a number of occasions that 43 CFR 3163.1(b)(2) clearly establishes the Department's policy that drilling without approval, or causing surface disturbance preliminary to drilling without approval, constitutes an instance of such serious noncompliance that imposition of immediate assessments upon discovery is warranted. Jack Corman, 119 IBLA 289, 293 (1991); Magness Petroleum Corp., 113 IBLA 214, 216 (1990); Noel Reynolds, 110 IBLA 74, 76 (1989).

However, the specific language of 43 CFR 3163.1(b)(2), upon which BLM relies in imposing the assessment, supports the reduction in the number of days in violation urged by appellant. The regulation provides for an immediate assessment for (1) drilling without approval and (2) "causing surface disturbance on Federal or Indian surface preliminary to drilling without approval." (Emphasis added). In its November 20, 1992, letter to BLM, OGOM stated that the surface owner of the land upon which drilling was to take place was "Mr. Warren." On appeal, it asserts that it is the surface owner. Although it is not apparent from the record who owns the surface, it is clear that the surface is not "Federal or Indian." Because the land upon which appellant made surface preparations to drill was not Federal
or Indian surface, appellant may not be assessed under 43 CFR 3163.1(b)(2) for the 4 days it was engaged in surface preparations. However, it must be assessed for the 2 days of actual drilling.

Our decision in Jack Hammer, 114 IBLA 340 (1990), does not dictate a different result. In that case, we affirmed a maximum $5,000 assessment for drilling an oil well without a permit on a restricted Indian lease. Hammer had spudded a well on the lease on November 1, 1987, and completed it as an oil well on December 31, 1987. In seeking review of the assessment, Hammer asserted that while it had drilled its well on lands within
a restricted Indian lease, the well was not drilled on lands where a restricted Indian owned any surface interest. Hammer argued that the regulations authorize the imposition of an assessment only in a situation where a well is drilled without approval on Federal or Indian surface or
if surface disturbance is caused to Federal or Indian surface prior to obtaining a drilling permit.

The Board rejected that argument. It pointed out that the regulation referred, in the alternative, to drilling without approval or causing surface disturbance to Federal or Indian surface preliminary to drilling without approval and that the "Federal or Indian surface" limitation applied only to surface disturbance and not to drilling without approval. Thus, the assessment in Hammer was levied pursuant to the "drilling without approval" language of the regulation. In this case, BLM assessed for 2 days under the "drilling without approval" language and 4 days for "causing surface disturbance." But, as stated above, appellant did not cause surface disturbance of "Federal or Indian surface," and, therefore, it cannot be assessed under 43 CFR 3163.1(b)(2) for the 4 days of surface disturbance.

We find no merit to appellant's argument that, pursuant to 43 CFR 3163.1(a)(2), a $250 assessment is appropriate under these circumstances. The provisions of 43 CFR 3163.1(a) pertain to violations or defaults other than drilling or surface disturbance without a permit, failure to install blowout preventers, or failure to obtain approval of a plan for well abandonment prior to commencement of abandonment operations. They provide for

notice and opportunity to abate prior to assessment of a violation. 2/ BLM assessed appellant immediate liquidated damages under 43 CFR 3163.1(b)(2). See Northland Royalty Operating Co., 123 IBLA 104, 106 (1992). The provisions of 43 CFR 3163.1(a)(2) are not applicable.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and reversed in part.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

2/ See 52 FR 5387 (Feb. 20, 1987), which states:

"The comments specifically criticized the provision of the proposed rulemaking that would permit the assessment of damages without notice. * * * [T]he only violations assessed without notice and an opportunity to abate are set out in paragraph (b) of this section and cover only a failure to install blowout preventers, a failure to obtain approval prior to drilling, and a failure to obtain approval for well abandonment. These three enumerated requirements for Federal and Indian lease operations could not be clearer or more widely known."